IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

Crl.Rev.Pet.No. 3394 of 2007()

CRA.149/2001 of ADDL. SESSIONS COURT (ADHOC), THALASSERY
CC.64/1999 of CHIEF JUDITIAL MAGISTRATE COURT, THALASSERY

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REVN. PETITIONER: APPELLANT/ACCUSED

M.A.KADER,
S/O.ASSAINAR AGED 43 YEARS,
RESIDING AT PARAKUNNU,THOOVAKUNNU,
KOLAVALLUR,THALASSERY TALUK.

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.M.K.SUMOD

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE

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1. THE STATION HOUSE OFFICER,
KOLAVALLUR POLICE STATION
THALASSERY TALUK.

2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM.

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3394 OF 2007

Dated this the 20th day of September, 2007

O R D E R

The revision petitioner, who was the accused in C.C.No.64/99 on the file of the CJM, Thalassery for an offence punishable under section 326 IPC, challenges the conviction entered and the sentence passed against him concurrently by the courts below for the said offence.

2. What has been proved by the prosecution in this case is the following:-

PW1, the defacto complainant, was returning home along with his son PW2 at 6.30 p.m. on 17.1.99 from his place of work. The accused was seen standing on the pathway. Seeing the accused, PW1 asked him why he was standing there. Suddenly, the accused picked MO1 granite stone from the ground and hit him(PW1) on the face resulting in PW1 sustaining the following injuries:-

(i) Multiple superficial abrasions over his right shoulder;

(ii) three superficial abrasions on the upper part of his right chest;

(iii) abrasion 2 x 2 cm. over the forehead;

(iv) lacerated injury 2 x 1 x 1/2 cm. over the upper lip of mouth;

(v) abrasion over nose and nasal septum and fracture of nasal bone;

(vi) contusion 3 x 2 cm. on the upper lip; and

(vii) contusion 3 x 1 cm. on the lower lip.

The motive for the occurrence was the alleged assault on PW2, the son of PW1, by the defacto complainant(PW1). PW1 was taken to the hospital from where PW4, the Doctor, examined him and issued Ext.P3. Further medical proof confirmed the fracture of nasal bone of PW1.

3. The courts below have concurrently convicted the accused for the offence punishable under section 326 IPC. The occurrence was proved by PWs 1 and 2. The conviction recorded by the courts below is after an evaluation of the oral and documentary evidence in the case and this court, sitting in the rarefied revisional jurisdiction, will be loathe to interfere with the said conviction which is accordingly confirmed.

4. What now survives for consideration is the question of adequacy or otherwise of the sentence imposed on the revision petitioner. The trial court had directed the revision petitioner to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- and to pay a sum of Rs.2,000/- out of the same to the complainant by way of compensation under section 357(1) Cr.P.C. The lower appellate court reduced the sentence of imprisonment to simple imprisonment for three

months and to pay a fine of Rs.5,000/- and to pay the fine amount as compensation to PW1. Having regard to the facts and circumstances of the case, I do not think that the revision petitioner deserves penal servitude by way of incarceration. I am of the view that interests of justice will be adequately met by directing the revision petitioner to pay an adequate sum by way of compensation. Accordingly, the sentence imposed on the revision petitioner is set aside and instead, he is directed to suffer imprisonment till the rising of the court and to pay a sum of Rs.12,000/- (Rupees twelve thousand only) as compensation to PW1 within two months from today, failing which he shall suffer simple imprisonment for two months by way of default sentence.

This revision is disposed of confirming the conviction but altering the sentence as above.

(V. RAMKUMAR, JUDGE)

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